

Message Text

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FM AMEMBASSY LISBON

TO SECSTATE WASHDC 9432

INFO AMCONSUL LOURENCO MARQUES

AMCONSUL LUANDA

AMEMBASSY MADRID

USCINCEUR

DOD

C O N F I D E N T I A L SECTION 1 OF 2 LISBON 1499

E.O. 11652: GDS

TAGS: PINS PO

SUBJ: FAA SECTION 32: POLITICAL PRISONERS

REF: STATE 068545

SUMMARY: PORTUGAL HAS RESTRICTIVE LEGISLATION CONCERNING POLITICAL ACTIVITY. ILLEGAL POLITICAL ACTIVITY IS FREQUENTLY PUNISHED UNDER A LAW PROHIBITING "SUBVERSIVE ACTIVITIES AGAINST STATE SECURITY". THERE ARE SPECIAL ARRANGEMENTS FOR TRYING POLITICAL OFFENDERS. AT THE END OF 1972 THERE WERE 60 PERSONS SERVING SENTENCES FOR POLITICAL OFFENSES, WITH 59 AWAITING TRIAL. GOP IS MOST UNLIKELY TO BE RECEPTIVE TO CONSTRUCTIVE CRITICISM. US INFLUENCE WOULD BE REDUCED IN PORTUGAL IF MILITARY AID WERE TERMINATED BECAUSE OF THIS ISSUE. END SUMMARY.

1. EMBASSY RECOGNIZES THAT QUESTION OF "POLITICAL PRISONERS" POSES SERIOUS PROBLEMS OF DEFINITION AND INTERPRETATION, AND THAT BY SOME STANDARDS, EVERY COUNTRY IN THE WORLD, INCLUDING THE UNITED STATES, HOLDS
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"POLITICAL PRISONERS". WE FURTHER RECOGNIZE THAT SOME

DETAINED PERSONS CONSIDERED "POLITICAL" IN PORTUGAL WOULD BE IN PRISON IN ANY COUNTRY DUE TO THE NATURE OF THEIR OFFENSES (BOMBING, THEFT, PROPERTY DESTRUCTION, ETC.). HOWEVER, BECAUSE PORTUGAL FORBIDS POLITICAL PARTIES, REQUIRES GOVERNMENT AUTHORIZATION FOR MEETINGS, FORBIDS STRIKES, DEFINES CRIMINAL "SUBVERSIVE ACTIVITIES" VERY BROADLY, AND HAS SPECIAL COURTS AND PROCEDURES TO DEAL WITH THOSE WHO VIOLATE THESE RESTRICTIONS, EMBASSY BELIEVES PORTUGAL FALLS WITHIN PURVIEW OF FAA SECTION 32 ON POLITICAL PRISONERS.

2. MAIN SPECIFIC "POLITICAL" OFFENSES IN PORTUGAL ARE (A) "VIOLATION OF FREEDOM OF THE PRESS" I.E., FAILURE TO SUBMIT PERIODICALS TO CENSOR PRIOR TO DISTRIBUTION, AS WELL AS SLANDER, LIBEL, AND "OFFENSES AGAINST PUBLIC MORALITY". (B) HOLDING MEETINGS WITHOUT FORMAL AUTHORIZATION OF DISTRICT GOVERNOR (WHO REQUIRES THREE DAYS ADVANCE NOTICE AND LIST OF SPEAKERS AND TOPICS, BUT IN NO CASE MAY AUTHORIZE MEETINGS TO EXTEND BEYOND MIDNIGHT OR BE HELD OUTDOORS). IN PRACTICE, MEETINGS ON POLITICAL SUBJECTS ARE GENERALLY FORBIDDEN. (C) STRIKING OR INCITING TO STRIKE. (THESE PROHIBITIONS HAVE NOT DONE AWAY WITH UNCENSORED PUBLICATIONS, POLITICAL MEETINGS, AND STRIKE AGITATION, BUT RATHER HAVE DRIVEN THEM UNDERGROUND).

3. LES SPECIFIC, BUT VERY IMPORTANT POLITICAL OFFENSE IN PORTUGAL IS "SUBVERSIVE ACTIVITY AGAINST STATE SECURITY". VIRTUALLY ALL IMPRISONMENT FOR POLITICAL OFFENSES COMES UNDER THIS HEADING. ALL OF THE OFFENSES MENTIONED IN PARA (2) CAN BE, AND FREQUENTLY ARE, LISTED UNDER THIS HEADING. IN ADDITION THIS CATEGORY ENCOMPASSES: MEMBERSHIP IN ILLEGAL PORTUGUESE COMMUNIST PARTY (PCP), COURTS TAKING JUDICIAL NOTICE OF 'FACT' THAT PCP IS ANTICONSTITUTIONAL, VIOLENT, SUBVERSIVE ORGANIZATION; ALL CLANDESTINE ANTI-GOVERNMENT ACTIVITIES, INCLUDING CLANDESTINE CONTACTS, USE OF ALIASES, FALSE IDENTITY PAPERS, ETC., IF DONE IN A POLITICAL CONTEXT; DISTRIBUTION OF UNCENSORED ANTI-GOVERNMENT PROPAGANDA, INCLUDING HAND BILLS AND ANTI-GOVERNMENT SLOGANS PAINTED IN PUBLIC PLACES.

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(HOWEVER, THOSE WHO SPEAK AND WRITE AGAINST THE GOVERNMENT, IN FAVOR OF MARXISM, REVOLUTION, ETC., ARE GENERALLY UNMOLESTED UNLESS THEY PURSUE CLANDESTINE ACTIVITIES AS WELL, BECAUSE THE GOVERNMENT PREFERS TO CONTROL SUCH PROPAGANDA AT THE OUTLET, BY BANS ON MEETINGS AND BY CENSORSHIP, RATHER THAN BY MOVING AGAINST THE SOURCE).

4. THE OFFENSES LISTED PARAS 2 AND 3 (WHICH WE WILL

HENCEFORTH REFER TO AS "POLITICAL OFFENSES") RECEIVE SPECIAL HANDLING WITHIN THE PORTUGUESE SYSTEM OF CRIMINAL JUSTICE. THE PORTUGUESE APPROXIMATE EQUIVALENT TO THE ANGLO-AMERICAN INDICTMENT, KNOWN AS INSTRUCAO, IS PERFORMED BY THE SECURITY POLICE (DGS). SUSPECTS MAY BE HELD UP TO SIX MONTHS BEFORE INDICTMENT, AND FREQUENTLY ARE. FAMILIES OF SUSPECTS ARE NORMALLY NOTIFIED WITHIN A DAY OR TWO OF AN ARREST, AND THE SUSPECT IS NORMALLY PERMITTED TO CONTACT A LAWYER. LAW STATES THAT LAWYER MAY BE PRESENT DURING INTERROGATION. HOWEVER POLICE MAY INVOKE SPECIAL PROVISIONS TO EXCLUDE LAWYER. AS A RULE SUCH SPECIAL PROVISION IS INVOKED. LAWYERS AND OTHERS KNOWLEDGEABLE ABOUT POLITICAL PRISONERS HERE TELL US THAT INTERROGATIONS, PARTICULARLY OF IMPORTANT COMMUNIST SUSPECTS, ARE FREQUENTLY PROLONGED AND BRUTAL, WITH DEPRIVATION OF SLEEP FOR LONG PERIODS THE FAVORED METHOD OF BREAKING THE WILL OF A DETAINEE. (WE UNDERSTAND THE RECORD IS 17 DAYS, ALTHOUGH MOST SUSPECTS BREAK AFTER 4 OF 5).

5. POLITICAL OFFENSES ARE TRIED BEFORE SPECIAL TRIBUNALS OF THREE JUDGES WHO HANDLE NO OTHER CASES. (THERE IS ONE SUCH COURT IN LISBON AND ANOTHER IN OPORTO). ASIDE FROM THE INDICTMENT PROCEDURE AND THE SPECIALIZED NATURE OF THE TRIBUNAL, POLITICAL TRIALS PROCEED AS DO OTHERS IN THE PORTUGUESE SYSTEM, WITH AMPLE ROOM FOR ARGUMENTATION, REBUTTAL WITNESSES, ETC. A SUBSTANTIAL PERCENTAGE, ALTHOUGH NOT MAJORITY, OF THOSE ACCUSED OF POLITICAL OFFENSES ARE EITHER ACQUITTED OR GIVEN SUSPENDED SENTENCES. SENTENCES FOR TYPICAL CRIMES, SUCH AS MEMBERSHIP IN THE COMMUNIST PARTY, PAYING DUES TO IT, AND DISTRIBUTING COMMUNIST PARTY PROPAGANDA GENERALLY DRAW SENTENCES BETWEEN 6 AND 18

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MONTHS, BUT SOMETIMES ONLY FINES. APPEALS FROM THE POLITICAL COURTS ARE HANDLED BY A SPECIAL POLITICAL SECTION OF THE PORTUGUESE SUPREME COURT WITHOUT INTERMEDIARY APPEALS. THESE SUPREME COURT JUDGES DO NO OTHER WORK. A SPECIAL FEATURE OF THE LAW PERMITS COURTS TO IMPOSE A FIXED SENTENCE OF, SAY, TWO YEARS IMPRISONMENT, FOLLOWED BY "SECURITY MEASURES" OF UP TO SIX MORE YEARS IMPRISONMENT, WHICH MAY THEN BE IMPOSED AT THE DISCRETION OF THE POLICE. EFFECTS OF THIS PROVISION ARE TO KEEP UNDESIRABLES OUT OF CIRCULATION AND TO ENTICE THOSE SERVING SENTENCES TO COOPERATE WITH THE POLICE IN THE HOPE THAT THEIR FIXED SENTENCES WILL NOT BE EXTENDED.

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C O N F I D E N T I A L SECTION 2 OF 2 LISBON 1499

6. THE PROCEDURES OUTLINED ABOVE APPLY ONLY TO POLITICAL OFFENSES. OTHER CRIMES IN PORTUGAL ARE HANDLED IN MUCH THE SAME WAS AS IN OTHER WESTERN EUROPEAN COUNTRIES.

7. PROCEDURES DESCRIBED ABOVE ARE ALSO IN FORCE IN PORTUGAL'S AFRICAN TERRITORIES, BUT THEIR APPLICATION OVERSEAS IS MUCH MORE RIGOROUS THAN IN METROPOLE. WE UNDERSTAND THAT FREQUENT, PROLONGED, AND ILLEGAL DETENTIONS OF AFRICANS SUSPECTED OF TIES TO INSURGENT MOVEMENTS ARE COMMON. WE HAVE NO STATISTICS FOR ARRESTS AND DETENTIONS IN PORTUGAL'S AFRICAN TERRITORIES. (LUANDA AND LOURENCO MARQUES MAY WISH TO COMMENT.)

8. ACCORDING TO REPORT OF NATIONAL COMMISSION FOR ASSISTANCE TO POLITICAL PRISONERS (AN INFORMAL GROUP OF OPPOSITIONISTS, TWO OF WHOM ARE IN JAIL AT MOMENT), THERE WERE 119 "POLITICAL PRISONERS" AS OF JAN 1, 1973 RPT 1973, OF WHOM 59 WERE AWAITING TRIAL AND 60 WERE SERVING SENTENCES. STATISTICS FROM SAME SOURCE:

1970	1971	1972
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ARRESTS FOR POLITICAL

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OFFENSES	165	216	202
PERSONS RELEASED WITHOUT TRIAL	132	104	132
ACQUITTED OR GIVEN SUSPENDED SENTENCE		63	56
AWAITING TRIAL AS OF DEC 31	19	76	59
SERVING SENTENCES OR "SECURITY MEASURES" AS OF DEC 31	60	59	60

THESE FIGURES PROBABLY INCREASED IN 1973 (ALTHOUGH NO SOLID STATISTICS ARE AVAILABLE).

9. WITH REGARD REFTEL QUESTIONS RE ARBITRARY ARREST AND DETENTION: IN OUR VIEW QUESTION DOES NOT TURN ON "ARBITRARY" NATURE OF GOP ACTIONS. FURTHER, WE SEE NO PATTERN OF ARBITRARY (I.E., CAPRICIOUS, WHIMSICAL OR INCONSISTENT) INTERPRETATION OF THE LAW. RATHER, THE LAWS THEMSELVES (WHICH ARE GENERALLY FOLLOWED) ARE RESTRICTIVE, HARSH AND - BY AMERICAN STANDARDS - UNJUST.

10. WE SEE LITTLE ROOM FOR USG ACTION WHICH COULD BE EFFECTIVE IN REMEDYING SITUATION. SUGGESTIONS AT A HIGH LEVEL REGARDING UNPALATABLE NATURE OF GOP'S METHOD OF DEALING WITH POLITICAL DISSIDENTS AND HANDLING OF POLITICAL CRIMES MIGHT BE CONSIDERED. HOWEVER, SUCH INTERVENTIONS ARE BOUND TO BE CONSIDERED UNWARRANTED INTERVENTION IN DOMESTIC AFFAIRS. PORTUGAL VIEWS ITS LAWS AND POLICIES IN POLITICAL FIELD AS ESSENTIAL TO SURVIVAL OF REGIME AND VITAL TO SOCIAL ORDER IN PORTUGAL. IT UNLIKELY THAT GOP WOULD SCALE DOWN TIES WITH US (INCLUDING LAJES) RATHER THAN ADOPT MAJOR DOMESTIC REFORMS UNDER THE THREAT OF A CUTOFF OF MILITARY OR OTHER ASSISTANCE.

11. IF US MILITARY AID WERE CUT OFF AS RESULT POLITICAL PRISNOER ISSUE (PRESUMABLY FOLLOWING CONGRESSIONAL DEBATE, TO WHICH GOP WILL BE HIGHLY SENSITIVE), US INFLUENCE AND LEVERAGE ON PORTUGAL WOULD BE GREATLY REDUCED. IT IS HIGHLY UNLIKELY THAT GOP WOULD SEE NEW COOL RELATIONSHIP WITH US TO BE INCOMPATIBLE WITH

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CONTINUED US PRESENCE AT LAJES BASE. AID CUTOFF WOULD BOOST LIBERALS' MORALE, BUT BE OF MINIMAL EFFECT. ASSUMING PRESENT PORTUGUESE POWER STRUCTURE REMAINS IN

PLACE, GOP WOULD CONSIDER AID CUTOFF ON THIS ISSUE A
HIGH-HANDED AND UNFRIENDLY ACT, SIGNALLING A RETURN TO
POOR RELATIONS OF A DECADE AGO, WHEN US PRESSED PORTUGAL
INTERNATIONALLY AND PUBLICLY ON OVERSEAS TERRITORIES
ISSUE, AND REDUCED MILITARY AID TO 10 PERCENT OF PREVIOUS
LEVEL.

12. DEPARTMENT PLEASE PASS REFTTEL TO AMCONSULS LOURENCO MARQUES
AND LUANDA.
SCOTT

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